

Decision No. R14-0107-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1329TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

PROCEEDING NO. 13G-1346TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

PARKING AUTHORITY LLC,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTIONS, CONSOLIDATING
PROCEEDINGS, DESIGNATING LEAD
PROCEEDING, PERMITTING RESPONDENT
TO PROCEED WITHOUT LEGAL COUNSEL,
VACATING STAFF FILING REQUIREMENT,
VACATING HEARING, REQUIRING STAFF
TO MAKE FILING, WAIVING RESPONSE TIME
TO MOTIONS, AND CONTAINING ADVISEMENTS**

Mailed Date: January 28, 2014

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I. STATEMENT

1. On December 13, 2013, the Commission served, by certified mail (return receipt requested), Civil Penalty Assessment Notice or Notice of Complaint (CPAN) No. 107699 on Parking Authority LLC (Parking Authority or Respondent). That CPAN commenced *Proceeding No. 13G-1329TO*.

2. On December 26, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1329TO. By filing this request, Respondent entered a general appearance in that Proceeding.

3. On January 8, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1329TO to the undersigned Administrative Law Judge (ALJ).

4. On January 9, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in Proceeding No. 13G-1329TO. In that filing and pursuant to Rule 4*Code of*

Colorado Regulations (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in Proceeding No. 13G-1329TO.

5. On December 19, 2013, the Commission served, by certified mail (return receipt requested), CPAN No. 108156 on Parking Authority. That CPAN commenced *Proceeding No. 13G-1346TO*.

6. On December 31, 2013, Respondent requested an evidentiary hearing in Proceeding No. 13G-1346TO. By filing this request, Respondent entered a general appearance in that Proceeding.

7. On January 10, 2014, counsel for Trial Staff of the Commission (Staff) entered his appearance in Proceeding No. 13G-1346TO. In that filing and pursuant to Rule 4CCR 723-1-1007(a), Staff counsel identified the trial Staff and the advisory Staff in Proceeding No. 13G-1346TO.

8. On January 15, 2014, by Minute Order, the Commission assigned Proceeding No. 13G-1346TO to ALJ Mirbaba.

9. Staff and Parking Authority, collectively, are the Parties in Proceedings No. 13G-1329TO and No. 13G-1346TO.

A. Consolidation Is Granted.

10. On January 22, 2014, in each of the two referenced cases, Staff filed a Motion to Consolidate Proceeding Nos. 13G-1329TO and 13G-1346TO (Consolidation Motions). The certificate of service appended to each of the Consolidation Motions states that, on January 22, 2014, Staff served each of the Consolidation Motions on Respondent.

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

11. In each of the Consolidation Motions at ¶ 6, Staff states that its counsel “has spoken with Respondent to confer about this motion [and that] Respondent is in agreement with the relief sought” in the Consolidation Motions. Based on this representation, the ALJ finds that no party will be prejudiced if response time to the Consolidation Motions is waived. The ALJ will waive response time to the Consolidation Motions.

12. As grounds for granting the Consolidation Motions, Staff states: (a) the Parties in the two Proceedings are the same; (b) the violations alleged in each Proceeding are the same violations; (c) consolidation will not unduly prejudice any party; and (d) consolidation will be administratively efficient and will preserve the resources of the Commission and the Parties. Importantly, Staff represents that “Respondent is in agreement with the relief sought” in the Consolidation Motions. Consolidation Motions at ¶ 6.

13. Rule 4CCR 723-1-1402 governs consolidation and contains the standard for consolidation. The Rule states that the “Commission may consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced.”

14. Consolidation lies within the ALJ’s sound discretion. Pursuant to Rule 4 CCR 723-1-1402, the ALJ finds that consolidation of the two referenced Proceedings meets the standard and is appropriate. First, Respondent supports consolidation;² thus, no party’s rights will be prejudiced if the Proceedings are consolidated. Second, under the circumstances presented, consolidation is administratively efficient and conserves the resources of the Commission, Staff, and Respondent.

² The ALJ notes that, while Respondent supports consolidation, Respondent expressly takes issue with the substance of the first sentence in ¶ 4 of the Consolidation Motions. Response to Show Cause for Self Representation at 4. Because it limits its agreement to the relief sought (that is, consolidation), Respondent does not agree with, and is not bound by, Staff’s factual representations and legal arguments presented in support of the Consolidation Motions.

15. The ALJ will grant the Consolidation Motions and will consolidate Proceedings No. 13G-1329TO and No. 13G-1346TO (Consolidated Proceeding). The ALJ will designate Proceeding No. 13G-1329TO as the primary Proceeding. The ALJ will order the Parties to comply with the requirements set out in the Ordering Paragraphs below.

B. Respondent May Be Represented by Mr. Jon L. Florey.

16. Rule 4 CCR 723-1-1201(a) requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear without legal counsel to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S.

17. This Consolidation Proceeding is an adjudication before the Commission. Respondent is a limited liability company, is a party in this matter, and is not represented by an attorney in this Consolidated Proceeding.

18. In order to be represented in this Consolidated Proceeding by an individual who is not an attorney, Respondent must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Respondent is an officer who has authority to represent Respondent.

19. On January 10, 2014, by Decision No. R14-0029-I issued in Proceeding No. 13G-1329TO, the ALJ required Respondent to make, no later than January 24, 2014, an election: (a) obtain legal counsel; or (b) make a filing to establish, pursuant to Rule 4 CCR 723-1-1201(b)(II), that it may proceed without an attorney. Decision No. R14-0029-I at ¶ 12 described the content of the show cause filing.

20. On January 23, 2014 in Proceeding No. 13G-1329TO and in Proceeding No. 13G-1346TO, Respondent filed its Response to Show Cause for Self Representation (Show Cause Filings). In its Show Cause Filings, Respondent states: (a) Respondent has fewer than three owners, and Mr. Jon L. Florey is Respondent's owner; (b) the amount in controversy is less than \$ 15,000; and (c) as owner, Mr. Jon L. Florey has authority to represent Respondent in Proceeding No. 13G-1329TO and in Proceeding No. 13G-1346TO.

21. Review of the information provided by Respondent in the Show Cause Filings establishes that Respondent is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., as Respondent has three fewer owners.

22. Review of the two CPANs reveals that the maximum assessment sought in this Consolidated Proceeding is \$ 4,840 (that is, \$ 2,420 in each CPAN). This establishes that the amount in controversy in this Consolidated Proceeding is less than \$ 15,000.

23. Respondent states that Mr. Jon L. Florey will be its non-lawyer representative in this matter. Review of the information provided by Respondent in the Show Cause Filings establishes that Mr. Florey is authorized to appear on behalf of Respondent.

24. Based on the information provided, the ALJ finds that Respondent has satisfied the requirements of Rule 4CCR 723-1-1201(b)(II). Although he is not an attorney, Mr. Jon L. Florey may represent Respondent in this Proceeding.

25. Parking Authority is advised, and is on notice, that Mr. Jon L. Florey is the only individual who is not an attorney who is authorized to be Parking Authority's representative in this Consolidated Proceeding.

26. Parking Authority is advised, and is on notice, that its non-attorney representative Mr. Jon L. Florey will be bound by, and will be held to, the same procedural

and evidentiary rules as those to which attorneys are held. The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A pro se defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985). This standard applies in civil proceedings. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983) (“If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state. [Citation omitted.] A judge may not become a surrogate attorney for a *pro se* litigant.”). This standard applies in Commission proceedings.

27. Among the procedural rules to which Mr. Florey is held are the Rules of Practice and Procedure, Part 4 CCR 723. **The ALJ advises Respondent and Mr. Florey, and puts Respondent and Mr. Florey on notice, that Mr. Florey must be familiar with, and must follow, those Rules.**

C. Staff’s Filing Requirement (Proceeding No. 13G-1329TO) and Evidentiary Hearing (Proceeding No. 13G-1346TO) Are Vacated.

28. By Decision No. R14-0029-I issued in Proceeding No. 13G-1329TO, the ALJ ordered Staff to make, not later than February 7, 2014, a filing that contains a list of proposed hearing dates for that case.

29. On January 22, 2014, Staff filed in Proceeding No. 13G-1329TO a Motion to Vacate or Stay Interim Decision R14-0029-I (Motion to Vacate Interim Decision).

30. In the Motion to Vacate Interim Decision at ¶ 5, Staff states that it “has spoken with Respondent to confer about this motion [and that] Respondent is in agreement with the relief sought” in the Motion to Vacate Interim Decision. Based on this representation, the ALJ finds that no party will be prejudiced if response time to the Motion to Vacate Interim Decision is waived. The ALJ will waive response time to the Motion to Vacate Interim Decision.

31. As grounds for granting the Motion to Vacate Interim Decision, Staff states that, in view of the Consolidation Motions, the requirement that Staff file, not later than February 7, 2014, proposed hearing dates should be vacated so that a single hearing and a single procedural schedule can be established if the Consolidation Motions are granted. Staff also states that granting the Motion to Vacate Interim Decision is administratively efficient. Importantly, Staff represents that “Respondent is in agreement with the relief sought” in the motion. Motion to Vacate Interim Decision at ¶ 5.

32. The Motion to Vacate Interim Decision states good cause; and, as Respondent agrees to the relief sought, granting the Motion to Vacate Interim Decision will not prejudice any party. The ALJ will grant the Motion to Vacate Interim Decision and will vacate the requirement that the requirement that Staff file, not later than February 7, 2014, proposed hearing dates in Proceeding No. 13G-1329TO.

33. The evidentiary hearing in Proceeding No. 13G-1346TO is scheduled for February 11, 2014.

34. On January 22, 2014, Staff filed in Proceeding No. 13G-1346TO a Motion to Vacate the February 11, 2014 Hearing Date (Motion to Vacate Hearing).

35. In the Motion to Vacate Hearing at ¶ 5, Staff states that it “has conferred with Respondent, which agrees with the relief sought” in the Motion to Vacate Hearing. Based on this

representation, the ALJ finds that no party will be prejudiced if response time to the Motion to Vacate Hearing is waived. The ALJ will waive response time to the Motion to Vacate Hearing.

36. As grounds for granting the Motion to Vacate Hearing, Staff states that, in view of the Consolidation Motions, the February 11, 2014 hearing date should be vacated so that a single hearing and a single procedural schedule can be established if the Consolidation Motions are granted. Staff also states that granting the Motion to Vacate Hearing is administratively efficient and will preserve the resources of the Commission and the Parties. Importantly, Staff represents that “Respondent ... agrees with the relief sought” in the motion. Motion to Vacate Hearing at ¶ 5.

37. The Motion to Vacate Hearing states good cause; and, as Respondent agrees to the relief sought, granting the Motion to Vacate Hearing will not prejudice any party. The ALJ will grant the Motion to Vacate Hearing and will vacate the February 11, 2014 evidentiary hearing date in Proceeding No. 13G-1346TO.

D. Staff Is To Make Filing.

38. Respondent has requested an evidentiary hearing in this Consolidated Proceeding. As a consequence, the Consolidated Proceeding must be set for hearing.

39. By this Interim Decision, the ALJ will order Staff to contact Respondent in order to discuss dates for the evidentiary hearing in this Consolidated Proceeding. By this Interim Decision, the ALJ will order Staff to file, not later than **February 14, 2014**, a list of three proposed hearing dates, each of which is agreeable to the Parties.³ If possible, the ALJ will select

³ If the Parties are of the opinion that more than one hearing day will be necessary, Staff should propose three “sets” of hearing dates. Within each proposed “set,” the hearing days must be consecutive within the same work week (*i.e.*, no intervening weekends and no intervening State holidays).

one of the proposed dates. By this Interim Decision, the ALJ will order Respondent to cooperate with Staff with respect to the required filing.

40. **The Parties are advised, and are on notice, that** if Staff fails to make the required filing, the ALJ will select the evidentiary hearing date without input from the Parties.

41. **The Parties are advised, and are on notice, that** the testimony in this Consolidated Proceeding will be presented through oral testimony at the evidentiary hearing. For each witness (except a witness offered in Staff's rebuttal case), the following information must be provided: (a) the witness's name; (b) the witness's address; (c) the witness's business or daytime telephone number; and (d) a detailed statement of the testimony that the witness is expected to provide. This information must be provided in the list of witnesses to be filed in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

42. **The Parties are advised, and are on notice, that** no person -- *including Mr. Jon L. Florey* -- will be permitted to testify (except in Staff's rebuttal case) unless that person is identified in the list of witnesses.

43. **The Parties are advised, and are on notice, that** complete copies of all exhibits (except an exhibit offered in Staff's rebuttal case or an exhibit to be used in cross-examination) must be filed in advance of the hearing and in accordance with the procedural schedule that the ALJ will establish in a future Interim Decision.

44. **The Parties are advised, and are on notice, that** no document will be admitted as an exhibit (except in Staff's rebuttal case or when used in cross-examination) unless a complete copy of the document is filed in advance of the hearing.

E. Additional Advisements.

45. **The Parties are advised, and are on notice, that** each party must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

46. **The Parties are advised, and are on notice, that** the date of filing with the Commission is the date on which the Commission *receives* a document. Thus, for example, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission.

47. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. One may learn about, and -- if one wishes to do so -- may register to use, the E-Filings System at www.dora.colorado.gov/puc.

II. ORDER**A. It Is Ordered That:**

1. The Motions to Consolidate Proceeding Nos. 13G-1329TO and 13G-1346TO, which motions were filed on January 22, 2014, are granted.

2. Proceedings No. 13G-1329TO and No. 13G-1346TO are consolidated.

3. Proceeding No. 13G-1329TO is the primary Proceeding.

4. All Proceeding numbers and captions in the Consolidated Proceeding shall be listed on all future filings, as shown above on this Interim Decision. Proceeding No. 13G-1329TO and its caption shall appear first.

5. The parties in each Proceeding are parties in the Consolidated Proceeding.

6. This Consolidated Proceeding is assigned to the undersigned Administrative Law Judge.

7. Consistent with the discussion above, Parking Authority, LLC, is authorized to proceed with Mr. Jon L. Florey as its representative in this Consolidated Proceeding.

8. Consistent with the discussion above, Mr. Jon L. Florey is the only individual who is not an attorney who is authorized to represent Parking Authority, LLC, in this Consolidated Proceeding.

9. The Motion to Vacate or Stay Interim Decision R14-0029-I, which motion was filed in Proceeding No. 13G-1329TO, is granted.

10. The filing requirement contained in Decision No. R14-0029-I at Ordering Paragraph No. 4 is vacated.

11. Consistent with discussion above, and not later than February 14, 2014, Staff of the Commission shall make filing that complies with ¶ 39, above.

12. Parking Authority, LLC, shall cooperate with Staff of the Commission with respect to the filing required by Ordering Paragraph No. 11, above.

13. If Staff of the Commission fails to make the filing required by Ordering Paragraph No. 11, above, the Administrative Law Judge will schedule the evidentiary hearing in this Consolidated Proceeding without input from the Parties.

14. The Motion to Vacate the February 11, 2014 Hearing Date, which motion was filed in Proceeding No. 13G-1346TO, is granted.

15. The February 11, 2014 evidentiary hearing scheduled in Proceeding No. 13G-1346TO is vacated.

16. Response time to the Motions to Consolidate Proceeding Nos. 13G-1329TO and 13G-1346TO, which motions were filed on January 22, 2014, is waived.

17. Response time to the Motion to Vacate or Stay Interim Decision R14-0029-I, which motion was filed in Proceeding No. 13G-1329TO, is waived.

18. Response time to the Motion to Vacate the February 11, 2014 Hearing Date, which motion was filed in Proceeding No. 13G-1346TO, is waived.

19. The Parties are held to the advisements in the Interim Decisions issued in Proceeding No. 13G-1329TO and in this Consolidated Proceeding.

20. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director